

CALIFORNIA COASTAL COMMISSION

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December 16, 2004

TO: Commissioners and Interested Persons

FROM: Deborah Lee, Deputy Director
Pam Emerson, Los Angeles County Area Supervisor
Charles Posner, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 2-04 (MNB-MAJ-2-4) to the City of Manhattan Beach Certified Local Coastal Program. For public hearing and action at the Commission's January 13, 2005 meeting in Long Beach.

SUMMARY OF LCP AMENDMENT REQUEST NO. 2-04

The Coastal Commission certified the City of Manhattan Beach Local Coastal Program (LCP) on May 12, 1994. The current LCP amendment request, submitted for Commission certification by City Council Resolution No. 5936, is the City's seventh major LCP amendment request since certification and its first *major* LCP amendment request for 2004. The LCP amendment would amend the City's zoning regulations (LIP Section A.24.030) that apply to the OS (Open Space) Land Use District in order to allow sporting events for which paid admission is charged (but prohibit charging admission for more than 25 percent of the seating capacity). Currently, only sporting events with no paid admission are allowed in the OS Land Use District (i.e., the beach). The new provision that would allow paid admission to sporting events in the OS Land Use District is contained in City Council Ordinance No. 2064 (Exhibit #3). Only the Implementing Ordinances (LIP) portion of the certified LCP is affected.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

- 1. Reject the LIP amendment request as submitted; and,**
- 2. Certify, only if modified, the LIP amendment request.**

The motions to accomplish this recommendation are on Page Three. The suggested modification, which would affirm that more than 75 percent of the *total seating area* at any temporary sporting event in the OS Land Use District would be available for free to the general public, is necessary to carry out the provision of the certified LUP that requires the beach to be preserved for public recreation.

See Page Four for the suggested modification. Only if modified as suggested, would the LCP amendment request conform with, and be adequate to carry out, the provisions of the certified LUP.

CONTENTS OF LCP AMENDMENT REQUEST

Local Coastal Program Amendment Request No. 2-04 affects only the Implementing Ordinances (LIP) portion of the City's certified LCP. City Council Resolution No. 5936 submits the proposed LIP amendment for certification by the Commission (Exhibit #2). The proposed LIP amendment is contained in City Council Ordinance No. 2064 (Exhibit #3).

The City Planning Commission held a public hearing for the proposed ordinance and LCP amendment on August 11, 2004. The City Council held a public hearing on the matter on September 7, 2004. The City Council adopted Ordinance No. 2064 on September 21, 2004. Since 1997, both the City and the Coastal Commission have held several public hearings for the annual Manhattan Beach Open Volleyball Tournament during which the issue of paid admission to temporary sporting events on the beach was discussed (See Coastal Commission Appeal/Permit Case Nos. A-5-MNB-97-084, A5-MNB-03-075 & A5-MNB-04-108).

On October 25, 2004, the Commission's South Coast District office received the materials to complete the City's submittal of LCP Amendment Request No. 2-04 and deemed it submitted for Commission review consistent with the submittal requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510, 30514 and 30605 of the Coastal Act, and Sections 13551, 13552 and 13553 of the California Code of Regulations). On December 8, 2004, the Commission extended for one year the time limit for its review of the LCP amendment request.

STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementing Ordinances (LIP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the Commission can only reject the proposed LIP amendment if it is not in conformance with, or renders the LIP inadequate to carry out, the provisions of the certified Land Use Plan (LUP).

ADDITIONAL INFORMATION

Copies of the staff report are available at the Commission's South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact *Charles Posner* or *Pam Emerson* in the Long Beach office at (562) 590-5071.

I. STAFF RECOMMENDATION

A. Deny the Amendment to the LCP Implementing Ordinances as Submitted

MOTION I: *"I move that the Commission reject Amendment Request No. 2-04 to the City of Manhattan Beach Implementing Ordinances as submitted by the City."*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the amendment to the LCP Implementing Ordinances as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution Rejecting the LIP Amendment as Submitted

The Commission hereby rejects the Amendment Request No. 2-04 to the LCP Implementing Ordinances for the City of Manhattan Beach, as submitted, and adopts the findings set forth below on grounds that the Implementing Ordinances do not conform with and are not adequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementing Ordinances would not meet the requirements of the California Environmental Quality Act because there area feasible mitigation measures and/or alternatives available which would substantially lessen any significant adverse effects of the Implementation Program on the environment.

B. Certify the Amendment to the LCP Implementing Ordinances if Modified

MOTION II: *"I move that the Commission certify Amendment Request No. 2-04 to the City of Manhattan Beach Implementing Ordinances if it is modified in conformity with the modification set forth in this staff report."*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the amendment to the LCP Implementing Ordinances, if modified as suggested, and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify the LIP Amendment if Modified

The Commission hereby certifies Amendment Request No. 2-04 to the LCP Implementing Ordinances for the City of Manhattan Beach, if modified as suggested, and adopts the findings set forth below on grounds that the Implementing Ordinances, if modified according to the suggested modification stated in Section II of this report, conform with and are adequate to carry out the provisions of the certified Land Use Plan. Approval of the Implementing Ordinances, if modified according to the suggested modification stated in Section II of this report, will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

II. SUGGESTED MODIFICATION

Certification of the LIP amendment is subject to the following modification to the OS District's Temporary Use Schedule set forth in LIP Section A.24.030:

[Staff Note: *The currently certified LCP language is shown in italics, the City's proposed change is identified with bold text, and the suggested new language is underlined.* The text suggested to be deleted is crossed-out.):

A.24.030. OS DISTRICT: LAND USE REGULATIONS

Temporary Uses

Animal Shows

U

Circuses and Carnivals

U

Commercial Filming

U

Sporting events for which no admission is charged for more than 75% of seating capacity where more than 75% of the total seating area is available free of charge for general public use. The "seating area" includes areas designated for spectators to use to view the event, including the spectator areas immediately adjacent to the court/field, and cannot include any areas from which the court/field cannot be seen at all.

U

(B)

III. FINDINGS

The following findings support the Commission's denial of the LCP amendment as submitted, and approval of the LCP amendment if modified as indicated in Section II (Suggested Modification) of this report. The Commission hereby finds and declares as follows:

A. Description and Background of LCP Amendment Request

The LCP amendment, contained in City Council Ordinance No. 2064, amends LIP Section A.24.030 in order to allow limited paid admission to temporary sporting events in the OS (Open Space) Land Use District. The public beach comprises most of the OS Land Use District in Manhattan Beach. Currently, sporting events may be permitted in the OS Land Use District as a temporary use only if no paid admission is charged to the event. Section A.24.030, as currently certified, states in part (*italics added by staff to highlight relevant text*):

A.24.030. OS DISTRICT: LAND USE REGULATIONS.

In the following schedule, the letter "P" designates use classifications permitted in the OS district. The letter "L" designates use classifications subject to certain limitations prescribed by the "Additional Use Regulations" which follow. The letter "U" designates use classifications permitted on approval of a use permit, as provided in Chapter A.84. The letters "P/U" for an accessory use mean that the use is permitted on the site of a permitted use but requires a use permit on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule.

[P - Permitted, U - Use Permit, L - Limited (See Additional Use Regulations)]

Temporary Uses

Animal Shows	U	(B)
Circuses and Carnivals	U	
Commercial Filming	U	
<i>Sporting events for which no admission is charged</i>	U	

OS District: Additional Land Use Regulations

- (A) Limited to facilities incidental to an open space use.
- (B) See Section A.84.110: Temporary use permits.

The proposed LCP amendment would continue to allow sporting events in the OS land use district as a temporary use, but would eliminate the prohibition on charging admission to such an event. Instead of prohibiting paid admission to temporary sporting events in the OS Land Use District, the proposed LIP amendment would allow temporary sporting events where no admission is charged for more than 75 percent of seating capacity. The City's proposed change to LIP Section A.24.030 would read as follows (the proposed new language is identified by **underlined bold text**):

*Sporting events for which no admission is charged **for more than 75% of seating capacity**.*

The City has provided the following definitions of terms used in the proposed new language:

Admission: A fee or other compensation provided for viewing an event of entertainment presentation.

Seating Capacity: The number of individuals that a facility is designed or intended to accommodate within provided seats, benches, or similar furnishings.

Sporting Event: An organized presentation of games, athletics, or similar skills intended for, or resulting in, viewing by an audience or substantial group of spectators.

The proposed LCP amendment attempts to address two issues that have arisen during the public hearings on past temporary sporting events that have been proposed to be held on the sand in Manhattan Beach: 1) paid admission vs. free admission to an event; and, 2) free public seating vs. paid seating and VIP-only areas where general admission to the event is free.¹

Commercial sporting events on the beach that raise these issues are not new for the Commission. In public hearings as far back as 1992, the Commission considered whether it is appropriate in some circumstances for admission to be charged to attend temporary events held on the public beach (See Exhibit #4: *Coastal Commission Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements*, Adopted 1/12/93). These temporary event guidelines allow for preferred, exclusive or paid seating arrangements as part

¹ See Coastal Commission Appeal/Permit Case Nos. A-5-MNB-97-084, A5-MNB-03-075 & A5-MNB-04-108.

of temporary events that can be authorized on the public beach, although the amount of such seating would be limited. The Commission has found that temporary events, and specifically volleyball tournaments that are mostly open (free) to the general public, can be held in a manner that is consistent with the public access and recreation policies of the Coastal Act, even though such events typically involve the exclusive use of sandy beach area.

In 2003 and 2004, the Commission on appeal permitted the Manhattan Beach Open Volleyball Tournament, an annual sporting event held on the beach, to charge sitting fees for up to 24 percent of the available seating even though the certified Manhattan Beach LCP does not allow sporting events with paid admission on the beach (See Coastal Development Permits A5-MNB-03-075 & A5-MNB-04-108). The Commission, in approving the limited paid seating areas, made a distinction between charging admission to the event and selling membership to restricted areas within the event area. General admission to the 2003 and 2004 tournaments was free, but the applicant (AVP) was permitted to charge spectators for sitting in special reserved seating areas (i.e., VIP/Beach Club) that comprised up to 24 percent of the total seating capacity. The Commission authorized the VIP/Beach Club reserved seating area (and free admission for the general public) for the Manhattan Beach Open in 2003 and 2004 by imposing the following special condition:

No admission fee shall be charged to attend the Manhattan Beach Open Volleyball Tournament. The general public shall be provided with free public access to viewing and seating areas within the event area. At least 76% of the total seating capacity at each court (including bleachers, sand areas and viewing platforms/risers surrounding each court) shall be available to the general public for free on a first-come, first-served basis. The remaining 24% (or less) of the total seating capacity at each court (including bleachers, sand areas and viewing platforms/risers surrounding each court) may be reserved for preferred Beach Club/VIP seating and/or access. The applicant is permitted to collect fees to access to the preferred seating areas.

The Commission's allowance for limited paid seating at the City's annual beach volleyball tournament in 2003 and 2004 was consistent with a limitation on paid seating set forth in the *Coastal Commission Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements* (Exhibit #4). The Commission's *Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements* allow the Executive Director to exclude most temporary events from coastal development permit requirements, except for those that meet all of the following criteria:

- a. The event is held between Memorial Day weekend and Labor Day; and,
- b. The event occupies all or a portion of a sandy beach area; and,
- c. The event involves a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

The guidelines also allow the Executive Director to exclude from permit requirements temporary events meeting all of the above criteria when:

- d. The fee is for preferred seating only and more than 75 percent of the provided seating capacity is available free of charge for general public use; or...*[criteria e, f & g not listed here – See Exhibit #4]*.

In the City of Manhattan Beach, however, the certified LCP controls the permitting requirements for development and use of the beach. The *Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements* do not supercede the requirements of the certified LCP. The Manhattan Beach certified LCP does not exclude or exempt temporary events from local coastal development permit requirements, and it allows sporting events in the OS Land Use District as a temporary use only if no paid admission is charged to the event.

The Commission, however, referred to the temporary event guideline's provision that allows some temporary events to be excluded from permit requirements if "*more than 75 percent of the provided seating capacity is available free of charge for general public use*" when it limited the amount of the seating that could be reserved for VIPs and members of the AVP Beach Club in 2003 and 2004 at the Manhattan Beach Open. The Commission found:

"Even though the public access and recreation policies of the Coastal Act and the certified LCP is the standard of review for this coastal development permit application, the Commission's Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements provide the Commission with guidance in regards to the proper ratio between free public seating and reserved seating for VIPs and members of the AVP Beach Club."

Therefore, while the Commission found that the certified LCP prohibited the applicant from charging general admission to the event on the beach, it also determined that the applicant could reserve and/or sell preferred seating for up to 24 percent of the total amount of seating capacity. The Commission, in conditioning its approval of the 2003 and 2004 Manhattan Beach Opens, ensured that "more than 75 percent of the provided seating capacity" was to be available free of charge for general public use.

The City has submitted this LCP amendment request in response to the Commission's comments regarding the provisions of the certified LCP made during the Commission's May 14, 2004 appeal hearing for the 2004 Manhattan Beach Open. The City interpreted the Commission's comments to suggest that the City should clarify its LCP in regards to the paid seating issue. The City now requests certification of the proposed LCP amendment that would delete the LCP's prohibition on charging admission and allow fees to be imposed for 25 percent of the seating at a temporary sporting event in the OS Land Use District.

B. Deny the Amendment to the LCP Implementing Ordinances as Submitted

Pursuant to Sections 30513 and 30514 of the Coastal Act, the proposed amendment to the LIP must conform with, and be adequate to carry out, the provisions of the certified Land Use Plan (LUP). The certified LUP sets forth the following policies that protect public access and recreational opportunities in the Manhattan Beach coastal zone:

- POLICY I.A.1:** The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.
- POLICY 1.A.2:** The City shall encourage, maintain, and implement safe and efficient traffic flow patterns to permit sufficient beach and parking access.
- POLICY I.A.5:** The City shall preserve its walk-street resources, shall prohibit non-complying walk-street encroachments, including decks, shall enforce measures to eliminate walk-street noncompliance with existing guidelines and shall provide expedited appeal procedures related thereto.
- POLICY I.A.8:** The City shall maintain visible signage to El Porto accessways and beach parking, along Highland Avenue.
- POLICY II.1:** Control development within the Manhattan Beach coastal zone.
- POLICY I.B.1:** The City shall encourage public transportation service to mitigate excess parking demand and vehicular pollution. All transportation/congestion management plans and mitigation measures shall protect and encourage public beach access.
- POLICY I.B.3:** The City shall encourage pedestrian and bicycle modes as a transportation means to the beach.
- POLICY I.B.6:** The Strand shall be maintained for non-vehicular beach access.
- POLICY II.B.4:** The beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways, and restrooms shall be permitted on the beach.
- POLICY I.C.2:** The City shall maximize the opportunities for using available parking for weekend beach use.
- POLICY I.C.3:** The City shall encourage additional off-street parking to be concentrated for efficiency relative to the parking and traffic system.
- POLICY I.C.9:** Use of existing public parking, including, but not limited to, on-street parking, the El Porto beach parking lot, and those parking lots indicated on Exhibit #9 (in the certified LCP), shall be protected to provide public beach parking...

The proposed LCP amendment would change the type of temporary sporting event that could be permitted in the OS Land Use District (i.e., the beach). Currently, only temporary sporting events for which no admission is charged can be permitted in the OS Land Use District. The proposed LCP amendment would allow such events to charge admission.

The certified LUP requires that the beach (OS Land Use District) be preserved for public recreation (Policy II.B.4). The proposed LIP amendment to allow sporting events on the beach that charge admission is not adequate to carry out this policy of the certified LUP because the proposed language is open to widely varying interpretations over the proportion of free general admission versus paid admission.

The City's proposed change to LIP Section A.24.030 would read as follows (the proposed new language is identified by **underlined bold text**):

*Sporting events for which no admission is charged **for more than 75% of seating capacity**.*

The problem, as demonstrated by the Commission's prior decisions allowing for limited paid seating at the 2003 and 2004 Manhattan Beach Opens, is that charging admission to an event is not the same as selling seats. Technically, no admission has ever been charged for attending a recent sporting event on the beach (OS District) in Manhattan Beach. The certified LCP does not allow it; only temporary sporting events "for which no admission is charged" can be permitted in the OS Land Use District. Moreover, the reason the LCP does not allow events on the beach that charge admission fees is because to do so would be inconsistent with LUP Policy II.B.4: The beach shall be preserved for public beach recreation.

Therefore, the City's proposed change to Section A.24.030, while allowing for limited paid admission to a temporary sporting event, does not directly preserve the public beach for public recreation as required by LUP Policy II.B.4. On the other hand, seats were being sold at the 2003 and 2004 Manhattan Beach Opens even though admission to each event was free. The Commission determined that practice to be consistent with LUP Policy II.B.4 because nearly all areas of the beach would remain open to the general public and more than 75 percent of the seating would be available to the public for free. Thus, the LIP can protect public recreation on the beach by clearly requiring 75 percent of the seats to be reserved for free general public use.

If the City's intent is to reserve at least 75 percent of the total seating capacity for free general public use at a temporary sporting event, as the Commission did when it approved the 2003 and 2004 Manhattan Beach Opens, then the LIP should state that rather than confusing the matter by implying that the admission fee is for seating when, in fact, an admission fee for an event on the beach is more for viewing the event than it is for reserving a seat.

In addition, the negative construction of the City's proposed language ("... no admission is charged . . .") is susceptible to varying interpretations. Clear, affirmative language to ensure that at least 75 percent of the total seating capacity at a temporary sporting event in the OS Land Use District would be available for free to the general public is necessary to carry out the provision of the certified LUP that requires the beach to be preserved for public recreation. Therefore, the Commission hereby **rejects** the proposed LIP amendment as submitted on grounds that the proposed LIP amendment does not conform with and is not adequate to carry out the provisions of the certified LUP.

C. Certify the Amendment to the LCP Implementing Ordinances if Modified

The Commission has found that temporary events, and specifically volleyball tournaments that are open (free) to the general public, can be held in a manner that is consistent with the public access and recreation policies of the Coastal Act and the certified Manhattan Beach LCP, even though such events typically involve the exclusive use of sandy beach area. In addition, the *Coastal Commission Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements* allow for preferred, exclusive or paid seating arrangements as part of temporary events that can be authorized on the public beach, although more than 75 percent of the seating capacity would have to be reserved for free general public use. That is because, with such a limit in place, the beach is still essentially preserved for general public use. Thus, with that limitation, the practice is also consistent with LUP Policy II.B.4.

The Manhattan Beach LUP should use affirmative language to ensure that at least 75 percent the total seating area at a temporary sporting event in the OS Land Use District would be available for free to the general public. Therefore, the Commission suggests the following language in order to achieve the City's intent while still carrying out the provision of the certified LUP that requires the beach to be preserved for public recreation:

Sporting events where more than 75% of the total seating area is available free of charge for general public use. The "seating area" includes areas designated for spectators to use to view the event, including the spectator areas immediately adjacent to the court/field, and cannot include any areas from which the court/field cannot be seen at all.

This language closely resembles the text used by the *Coastal Commission Guidelines for the Exclusion of Temporary Events from Coastal Development Permit Requirements* to ensure that a temporary event on the beach supports public access and recreation as in conformance with the Chapter 3 policies of the Coastal Act (Exhibit #4). Note that the "total seating area" includes not just provided seats or bleachers, but also the areas in close proximity to the event where spectators can stand or sit in the sand near the court or ball field. Without this provision, the City and Commission could be faced with the same scenario as existed in 2003 and 2004 for the Manhattan Beach Open where admission to the event was free, but large spectator areas next to the volleyball courts were reserved for VIPs and paying customers only.

The certified LUP requires that the beach (OS Land Use District) be preserved for public recreation (Policy II.B.4). The LUP amendment, if modified, would allow admission fees or seating fees at a temporary sporting event in the OS Land Use District, but only if more than 75 percent of the total seating area is reserved for general public use for free. Only if modified as suggested, would the LCP amendment request conform with, and be adequate to carry out, the provisions of the certified LUP as required by Sections 30513 and 30514 of the Coastal Act.

D. California Environmental Quality Act (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LCP amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that for the reasons discussed in this report there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts of the LCP amendment. The Commission further finds that the proposed LCP amendment, as submitted, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.